

IN SENATE OF THE UNITED STATES.

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JUNE 4, 1836.

Read, and ordered to be printed.

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Mr. DAVIS made the following

REPORT:

*The Committee on Commerce, upon the petition of Marcus Quincy and William Gorham, report :*

That they represent themselves to be the owners of the brig Neptune, of Portland, in the State of Maine, which sailed for Eastport in August, 1832, and from thence to Philadelphia, and thence to Boston, with a crew of seven men and a boy. At Boston, when she presented the list of her crew, and demanded her clearance, the collector of that port declined granting it without the payment of tonnage duty, as two-thirds of her crew were not American citizens.

The law requires that all vessels which are not manned with a crew two-thirds of whom are American citizens, shall be liable to pay a tonnage duty of fifty cents a ton. The object of this law is to give encouragement to American seamen, but all ship-owners have their option to comply with it or not.

In this case there is no question that two-thirds of the crew of the Neptune were not American citizens. The facts are agreed, namely, that five of the men were Americans, and two, with the boy, foreigners. The petitioners, therefore, do not contend that the duty which was paid was unlawfully demanded; they, however, set up what they consider to be an equitable claim to have it refunded. It rests on their representation that the boy was supposed by them to be a native American, whereas he was born in Ireland, and emigrated hither at the age of three or four years. They allege that he had no foreign accent, or any thing in his appearance which indicated his foreign nativity. In employing him they misjudged, as they aver, not doubting that he was an American. They also prove that he was suddenly engaged, at the moment when the vessel was about to sail, to take the place of another person who had failed to fulfil his contract.

The question is, Shall their mistake avail them? and the committee think it cannot, without establishing a precedent which would substantially repeal a law that was early placed on our statute-books, and has been deemed useful and promotive of the great interests of the country. The amount of the case is, they neglected to ask the boy whether he was an American; by making the inquiry they might have ascertained the

truth as readily as it was by the collector at Boston. It was their pleasure to employ him without such inquiry, and they must, under such circumstances, take the risks which follow their negligence.

They say the boy had no foreign accent which could distinguish him ; nor has a native of Canada, or Nova Scotia, New Brunswick, Bermuda, or England, any thing which distinguishes his language, ordinarily, from that of an American—all speak English. It would, therefore, be most unsafe to rely on observation only.

If we are to relieve against a mere mistake, there will be no end to the applications here, for there will be no motive to execute the law ; *mistakes will be made by design.*

The committee are, therefore, clearly of opinion that the Senate ought to adopt the following resolve :

*Resolved*, That the prayer of the petition ought not to be granted.